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**Will Democrats Use Welfare Reauthorization to Reverse Responsible Policy?**

**Immigrants Welcomed to Pursue Opportunity,  
Not Dependence**

***Executive Summary***

- The 1996 Welfare Reform Act restricted legal immigrants' eligibility for cash welfare benefits in order to reduce the welfare-dependent population and ensure such benefits are not an incentive to immigrate to the United States.
- In 1996, prior to enactment of the Welfare Reform Act, 12 percent of adult welfare cash recipients were not U.S. citizens – up from 7 percent just six years before.
- The current federal welfare law restores longstanding U.S. immigration policy, holds in check the number of welfare-dependent immigrants, and encourages legal immigrants to become true stakeholders in their resident country by becoming citizens.
- The law already provides significant exemptions for immigrants with special needs and circumstances (such as for refugees, asylees, active-duty military immigrants, and veterans), yet Democrats suggest they will continue their attempts to roll back this responsible policy when the Senate turns to the welfare reauthorization next year.
- Instead of rolling back reforms, Congress should do more to ensure that immigrants do not need to rely on federal cash benefits. One way would be to tighten the compliance and enforcement provisions on immigrants' legal sponsors to assure they live up to their pledge to support their charges.

## Introduction

One of the seminal achievements of the Republican-driven 1996 Welfare Reform Act was to make the welfare law more consistent with long-standing U.S. immigration policy: no one should come to America as a ward of the state. The reform attempted to ensure that immigrants would depend for assistance on the citizens who sponsored their immigration, not on the federal government, and that immigrants should strive to become U.S. citizens.<sup>1</sup> This was a significant step in ending the trend of ever-escalating percentages of welfare benefits being paid to immigrants.

Several factors have served to mitigate the impact of the immigrant-welfare policy reforms contained in the 1996 Welfare Reform Act, including: the numerous exemptions adopted by Congress (in 1996, and in subsequent years); the wide availability of many other government benefits available to immigrants; and the willingness of states to use state funds to pay benefits to immigrants who are ineligible for federal benefits.

Even with these methods to address special needs and circumstances, Democrats have advocated rolling back the reforms embodied in the 1996 Act. Amendments they advocate will expand federal welfare and unjustifiably release immigrant sponsors from their legally binding obligations.<sup>2</sup> The Senate should defeat such efforts and, instead, work to assure that the federal welfare law uphold the policy that legal immigrants themselves and their sponsors are the primary parties responsible for their welfare.

## Self-Sufficiency is Long-Standing Immigration Policy

In passing the 1996 Welfare Reform Act, Congress attempted to bring the welfare program into alignment with long-standing immigration policy: that those who immigrate to the United States should not depend on government benefits, but be prepared to work for a living. From colonial times, it was believed that immigrants likely to become “public charges,” unable to provide for themselves, should be denied entry or deported. The earliest immigration laws passed by the U.S. Congress echoed this sentiment.<sup>3</sup> Despite this history, the policy of self-sufficiency began to see some erosion during the 20<sup>th</sup> century with passage of liberal social welfare programs that made legal immigrants eligible for government-sponsored welfare benefits.

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<sup>1</sup>This paper deals with legal immigrants’ eligibility for government programs. It does not address illegal immigration. Within this paper, the term “immigrants” refers to legal immigrants.

<sup>2</sup>Senate Democrats filed amendments to roll back the policy during the Senate Finance Committee markup of the welfare reauthorization bill, H.R. 4; House Democrats offered similar amendments during House consideration of H.R. 4; these are further discussed on page 5 of this paper.

<sup>3</sup>James R. Edwards, *Public Charge Doctrine: A Fundamental Principle of American Immigration Policy*, Center for Immigration Studies, May 2001. From 1908 to 1980, over 22,556 immigrants were deported and 219,399 denied entry on “public charge” grounds, but government data reflects a sharp decline in its usage in recent decades. BCIS, “Yearbook of Immigration Statistics, 2002”.

As the number of immigrants drawing government benefits increased, individual state efforts to require self-sufficiency were frustrated by U.S. Supreme Court decisions holding that only the federal government may draw distinctions between legal immigrants and U.S. citizens. In two decisions in the 1970s, the Court held that immigration policy lies solely within the authority of the federal government and that states violate the Fourteenth Amendment's Equal Protection Clause if they draw distinctions between citizens and legally permanent residents (absent compelling circumstances) unless authorized to do so by federal law.<sup>4</sup>

The 1996 Welfare Reform Act provided that needed federal distinction: it declared national policy to be that "aliens within the Nation's borders not depend on public resources to meet their needs, but rather on their own capabilities and the resources of their families, their sponsors and private organizations, and [that] the availability of public benefits not constitute an incentive for immigration to the United States."<sup>5</sup> Under the Act, immigrants who entered the United States after the law's enactment on August 22, 1996 were to be ineligible for cash benefits through the welfare program, the Food Stamp program, Medicaid, or Social Security until they either became citizens or resided in the United States for five years. However, the Welfare Reform Act provided numerous exemptions, and those exemptions have been broadened in recent years.

## **Sponsors' Legally Binding Obligations**

In addition to providing the five-year waiting period for government benefits to immigrants, the Welfare Reform Act also requires those who sponsor new immigrants to be able to support them if necessary, and it provides a mechanism to ensure that sponsors honor their obligation. Most immigrants are sponsored by a current citizen. That sponsor makes a legally binding affidavit of support agreeing to fulfill the public welfare needs of the immigrant. In addition to provisions included in the Welfare Reform Act, Congress also passed separate legislation to strengthen the standards and enforcement of the commitment made by sponsors.<sup>6</sup>

According to the 1996 reforms, when a citizen petitions for admission of an immigrant, he or she must sign an affidavit of support committing to provide for the welfare of his charge for 10 years or until the immigrant is naturalized. All of a sponsor's income is deemed to be available to the immigrant for the purposes of means-testing for eligibility for government programs; and the sponsor's annual income must exceed 125 percent of the federal poverty level. Sponsors who fail to support the immigrant they sponsor can be held legally liable to both the immigrant and any government agency which provides resources to the sponsored immigrant.

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<sup>4</sup>*Graham v. Richardson*, 403 U.S. 365 (1971); *Mathews v. Diaz*, 426 U.S. 67 (1976); see also Congressional Research Service, "Noncitizen Eligibility for Major Federal Public Assistance Programs: Legal Concepts," March 25, 2003 (RS21470).

<sup>5</sup>8 U.S.C. 1601.

<sup>6</sup>Public Law 104-208, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.

There are three prongs to enforcement of the public-charge doctrine: a potential immigrant may be denied entry through the U.S. Immigration and Customs Enforcement (ICE, formerly the Immigration and Naturalization Service) on grounds that he or she will become a public charge; an immigrant may be deported if he becomes a public charge; and an immigrant's sponsor may be held legally liable for failure to provide for the sponsored immigrant. In recent years, these provisions rarely have been enforced. Available data indicates that use of these mechanisms is declining. On public-charge grounds, the State Department denied visas to 16,285 immigrants in 2000, to 5,891 immigrants in 2001, but to none in 2002 or 2003.<sup>7</sup> The INS deported 31 individuals from 1971 to 1980 for becoming public charges. Since 1980, record-keeping difficulties have forced the agency to stop publishing the number of deportations based on public-charge grounds; however, agency officials estimate public charge deportations have declined to one or less a year, with none occurring in 2001 or 2002 and one occurring in 2003.<sup>8</sup>

The Department of Homeland Security is required to keep records on use of the third mechanism of enforcement – holding sponsors liable. Any federal, state, or local agency may seek reimbursement from the sponsor and, if the sponsor fails to respond within 45 days, may sue for the reimbursement. Agencies that successfully obtain final judgments against sponsors are required to submit reports to DHS, but none has done so. A DHS spokesperson stated that no such judgments have been obtained.<sup>9</sup> The affidavit of support is also enforceable by the sponsored immigrant.

## **Large Social Safety Net in Place for Immigrants**

As passed, the Welfare Reform Act exempted several groups within the immigrant population: aliens who have worked in the United States for 40 quarters (10 years); immigrants (and their spouses and dependents) serving or who have served in the military; immigrants who are admitted as refugees; and asylees.<sup>10</sup> Refugees and asylees alone made up 12 percent of incoming immigrants in 2002,<sup>11</sup> and 37,000 immigrants are currently serving in the U.S. Armed Forces.<sup>12</sup> Additional exceptions have been enacted since the law took effect. Today, food stamps are available to all immigrants who are over 65,

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<sup>7</sup>Department of State Bureau of Consular Affairs data; 2003 data is preliminary.

<sup>8</sup>BCIS, Yearbook of Immigration Statistics, 2002; additional information obtained from Immigration and Customs Enforcement officials.

<sup>9</sup>Information obtained from Department of Homeland Security officials.

<sup>10</sup>Refugees, asylees and victims of trafficking in persons are eligible for Temporary Assistance for Needy Families (TANF) for their first five years in the U.S. and are eligible for food stamps, Medicaid and Social Security for their first seven years in the U.S. Additional exempted classes include Cuban/Haitian entrants, Vietnam-born Amerasians fathered by U.S. citizens, and aliens whose deportation is being withheld for humanitarian reasons.

<sup>11</sup>BCIS, Yearbook of Immigration Statistics, 2002.

<sup>12</sup>This number represents 2.6 percent of the U.S. Armed Forces. Congressional Research Service, "Expedited Citizenship Through Military Service: Policy and Issues," September 30, 2003 (RL31884).

under 18, or disabled, and Supplemental Security Income benefits are available to immigrants who lived in the United States by the law's 1996 passage.<sup>13</sup>

In addition to these exemptions, the impact of the Welfare Reform Act's immigrant-reform provisions has been limited by the access that *all* immigrants have to a wide array of federal and state government-funded services. Immigrants are still eligible for all noncash benefits available to U.S. citizens that are not offered on a means-tested basis. These include: school lunch and breakfast programs; immunizations and treatment of communicable diseases; emergency medical services; child protection and other services for victims of domestic violence; foster care and adoption payments; elementary and secondary education; disaster relief; soup kitchens; and other programs which are necessary to protect life and safety.

As discussed earlier, every state has the option of offering immigrants access to more benefits than the federal government requires, but not less. Many states have exercised this option. Almost every state created a state-funded program that provides some or all of the benefits available prior to the Welfare Reform Act's passage.<sup>14</sup> Ironically, states have the resources for a more generous program due in large part to federal welfare reform and its overwhelming success.

States are able to count any funds they spend on state welfare programs that may cover immigrants toward meeting their annually required "maintenance of effort" sum, which each state must spend in order to be eligible for the federal block grant.<sup>15</sup> Additionally, the block grant has remained at the same level as it was in 1996 – \$16.5 billion – even while state caseloads today are down to half of their 1996 level. With surplus federal dollars available to provide for citizens, states have used their own resources to provide more generous benefits to immigrants.<sup>16</sup> Now, as many of the states are facing

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<sup>13</sup>In the Balanced Budget Act of 1997, Congress restored Social Security income to all legal immigrants living in the U.S. by the date of enactment of the Welfare Reform Act (August 22, 1996). The 1998 Agricultural Research, Extension and Education Act opened the food stamp program to legal immigrant residents under age 18 and over age 65 as of the Welfare Reform Act's passage. In the 2002 Farm Bill, food stamps were further extended to all legal immigrant children and disabled individuals, and to all legal immigrants who had been living in the U.S. for five years.

<sup>14</sup>GAO, "Welfare Reform: Many States Continue Some Federal or State Benefits for Immigrants," July 1998; Wendy Zimmermann and Karen C. Tumlin, "Patchwork Policies: State Assistance for Immigrants Under Welfare Reform," The Urban Institute, 1998.

<sup>15</sup>In fact, a state is penalized by partial loss of funding if it fails to expend "maintenance of effort" (MOE) funds. MOE funds are equivalent to 75 percent of a state's "historic state expenditure" on welfare programs, as measured from 1994 state spending.

<sup>16</sup>In 1996, when the Welfare Reform Act was enacted, states spent over two-thirds of their federal block grant on cash benefits; by 2001, states spent one-third on cash benefits. This was due to the success of the Act, which led more people into self-sufficiency and decreased the welfare rolls by 57 percent (5.4 million individuals). States use surplus block grant funds to cover other needs of welfare recipients, such as childcare, family formation, and pregnancy prevention. Spending on childcare alone has increased from zero in 1997 to 11 percent of the block grant in 2001, and spending for work-related activities increased from 4 percent in 1997 to 13 percent in 2001. HHS, "Temporary Assistance for Needy Families Program, Fifth Annual Report to Congress," February 2003.

budget crises, some are looking to the federal government to help pick up the extra costs they imposed on themselves.

## **Efforts to Liberalize Immigrant Welfare Policies Expected to Continue**

When the Senate takes up reauthorization of the welfare program<sup>17</sup> next year, Democrats likely will attempt to increase welfare benefits for immigrants. During the Finance Committee markup of the welfare reauthorization bill, H.R. 4, on September 10, 2003, several amendments were filed, but not offered, by Democrat Senators. They would: give states the option to use federal funds to offer welfare cash benefits to immigrants upon arrival in the United States; reduce the period of time that an immigrant sponsor is required to support the immigrant; and expand other federal assistance programs to include immigrants.<sup>18</sup> The Minority Views printed in the Finance Committee report on H.R. 4 faulted the reported bill for failing to liberalize immigrant welfare policy.<sup>19</sup> During consideration of the bill in the House of Representatives, House members voted to defeat two Democrat-sponsored amendments intended to grant benefits to immigrants immediately upon their arrival.<sup>20</sup>

Several of the amendments filed during consideration in the Senate Finance Committee represent a particular danger to longstanding immigration policy for two reasons: first, they seek to release immigrant sponsors from their obligation of support after just three years, whereas the current obligation exists for 10 years; second, they mislead by appearing to have no cost. Because the welfare program is a block grant, additional qualified recipients do not immediately expand the cost of the program. However, if the number of people on welfare increases, each state will have fewer surplus federal resources to provide such benefits as childcare and transportation assistance. Additionally, an expanding number of beneficiaries, as opposed to the decline in recent years, will eventually result in increasing the amount of taxpayer resources dedicated to this program.<sup>21</sup>

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<sup>17</sup>The welfare program has gone under several names. The 1996 bill was titled Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), and it changed the name of the welfare program from Assistance to Families with Dependent Children (AFDC) to Temporary Assistance for Needy Families (TANF). The Senate bill to reauthorize the program is titled the Personal Responsibility for Individual Development for Everyone Act (PRIDE), and it amends the House-passed bill, H.R. 4.

<sup>18</sup>Senator Daschle filed two immigrant-reform amendments; Senator Bingaman filed two amendments; and Senator Graham filed four amendments.

<sup>19</sup>The committee report's Minority Views states that the bill "fails to provide states the option of restoring eligibility for benefits for legal immigrants, including health care services for legal immigrant children." S. Report 108-162, p. 88.

<sup>20</sup>On February 13, 2002, the House voted down two substitute amendments which would have reversed the current policy – an amendment from Congressman Kucinich (D-OH) was defeated by 124-300, and an amendment from Congressman Ben Cardin (D-MD) was defeated, 197-225. The final bill passed 230-192.

<sup>21</sup>The amendments discussed in this paragraph were offered by Senators Daschle and Bingaman. Senator Graham's amendments also sought to expand immigrant eligibility for Medicaid and the SCHIP children's health insurance program. Because these are not block grants, the Congressional Budget Office was able to estimate a cost for his amendments of \$500 million over three years.

Providing federally-funded welfare benefits to immigrants immediately upon arrival in the United States must be recognized for what it is – an effort to shift the cost of providing expanded benefits from state to federal taxpayers and to cast aside the immigrant sponsors’ role. Instead of weakening sponsors’ obligations, Congress should seek ways to better enforce it.

### **States’ Attempt to Shift Costs to Federal Government is Unfair to Taxpayers**

The welfare expansion advocated by Finance Committee Democrats would merely shift to the federal taxpayer the costs now borne by states that have made the policy decision to provide more generous benefits to immigrants. As recently as this year, some lawmakers have falsely characterized the Welfare Reform Act as prohibiting states from providing welfare benefits to immigrants.<sup>22</sup> In fact, the opposite is true. Because Congress passed the Welfare Reform Act, states have the option to cover or not cover immigrants; if they do cover immigrants, they must use state resources to do so. Recent research indicates that states choosing to offer generous benefits attract a higher proportion of immigrants.<sup>23</sup> Therefore, if a state makes itself a magnet for needy immigrants, it may bear a heavy burden to support them. However high the cost, it is not appropriate to shift the cost of that state’s individual policy choice to the federal taxpayer.

### **Republicans’ Preferred Policy: Fewer Dependents, More Citizens**

The burden of assisting new immigrants should fall to the immigrant’s sponsor, who has petitioned for the immigrant’s admittance and pledged to support the immigrant in the United States. Democrat amendments seek to end a sponsor’s obligation after just three years, seven years shy of the current obligation. Instead, Congress should explore ways to more vigorously enforce each sponsor’s promise. Although the record-keeping on public-charge and sponsor-obligation enforcement is far from complete, it is apparent that the provisions are not frequently used. Both federal and state agencies are able to seek reimbursement from a needy immigrant’s sponsor. If states are supporting immigrants because of a sponsor’s failure to do so, states may need additional guidance on how to pursue legal action against a sponsor.

There is no question that the Welfare Reform Act ended the escalation in the percentage of federal cash welfare benefits that go to immigrants. Yet, it is not at all clear that fewer immigrants are self-sufficient or relying on their sponsors for any welfare needs. Rolling back federal policy now, however, would certainly expand the number of individuals dependent on the federal government.

Although by some measures, the percentage of immigrants on welfare has not gone down, considering the trend before 1996, it surely is safe to assert it would have gone up without the five-year

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<sup>22</sup>*Congressional Record*, February 13, 2003, H542, (Congressman Cardin, “If a state chooses to cover legal immigrants, the state should have that option. There should be State flexibility. The underlying bill does not permit it; the substitute permits it.”).

<sup>23</sup>George Borjas, “The Impact of Welfare Reform on Immigrant Welfare Use,” Center for Immigration Studies, March 2002.

waiting period. The percentage of adult welfare cash recipients who were not citizens increased from 7 percent in 1989 to over 12 percent in 1996, when the Welfare Reform Act was enacted. In 2001, 8 percent of welfare cash payment beneficiaries were immigrants.<sup>24</sup> Using a broader measure that includes other types of government assistance in addition to welfare cash payments, the Center for Immigration Studies found that the number of immigrants drawing government benefits doubled in less than a decade, and then has remained constant since enactment of the Welfare Reform Act.<sup>25</sup>

Rolling back the Welfare Reform Act's immigrant policy now will result in a return in the troublesome trend of immigrants coming to the United States to take advantage of a generous welfare system and the ever-increasing costs of sustaining that system. For example, prior to the Welfare Reform Act's passage in 1996, it was widely reported that "a popular Chinese-language book sold in Taiwan, Hong Kong, and Chinese bookstores includes a 36-page guide to SSI and other welfare benefits."<sup>26</sup>

Finally, the Welfare Reform Act has had a positive effect on many immigrants. Immigrants were among the more than five million welfare recipients who found the motivation to work and gain that initial foothold of self-support, which leads to independence. Many of the immigrants who came looking for the American dream have chosen to become full-fledged citizens. The number of legal immigrants who naturalized after enactment of the 1996 Welfare Reform Act nearly doubled from the six-year period before the Act.<sup>27</sup> Residents who are U.S. citizens have a larger stake in the future of the United States. Polling data sheds light on why individuals choose to naturalize. A poll conducted in late 2002 of 1,000 immigrants found that 22 percent believed qualifying for Medicaid or food stamps was a major reason to become a citizen; 20 percent believed it was a minor reason; and 54 percent believed it was not a reason at all. Immigrants responded most positively to these three reasons (listed in order): to be able to vote; to have legal rights and protections; and to show commitment and pride in being an American.<sup>28</sup>

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<sup>24</sup>Congressional Research Service, "Noncitizen Eligibility for Major Federal Public Assistance Programs: Policies and Legislation," January 23, 2003(RL 31114).

<sup>25</sup>Borjas.

<sup>26</sup>George Borjas, "The Welfare Magnet," *National Review*, March 11, 1996.

<sup>27</sup>The number of persons naturalized in the six years preceding the Welfare Reform Act, 1990-1995, averaged 343,000. In the 6 years following the Welfare Reform Act, 1997-2002, it averaged more than 660,000. The year 1996 is not included in these calculation because, as the peak year of the Immigration Reform and Control Act (IRCA) amnesty, it had an unusually high number of naturalizations – 1,044,689. In 2002, eight percent of naturalization were under IRCA. The law sought to bolster enforcement of immigration laws and provided amnesty programs for illegal aliens in the United States since the beginning of 1982. (BCIS)

<sup>28</sup>Carnegie Corporation of New York, 2002, National Journal online.

## **Conclusion**

Congress should not further undo the work accomplished in the Welfare Reform Act. This law sent the message that the United States is a land of opportunity, not of dependence. Immigration for those who seek a life of independence is a positive factor in our nation's character; in fact, it is our nation's very foundation. Encouraging immigrants who instead seek dependence places an undue burden on taxpayers. The Welfare Reform Act struck the right balance: immigrants facing danger at home, such as asylees and refugees, are welcome to come to the United States and benefit from up to seven years of taxpayer-funded support; and those who step up to protect our nation by serving in the military can count on support, if necessary, for themselves and their families. Those who claim they will support themselves, however, must do so, or must depend on their sponsors for at least five years. Congress should investigate how well sponsors are meeting their obligations of support and, if necessary, develop ways to enforce the obligation more effectively.